

MINUTES OF THE SPECIAL CITY COUNCIL MEETING
THURSDAY- -MAY 12, 2005- -5:00 P.M.

Mayor Johnson convened the Special Meeting at 5:10 p.m.

ROLL CALL - Present: Councilmembers Daysog, deHaan, Gilmore,
Matarrese and Mayor Johnson - 5.

[Note: Councilmember Matarrese arrived at 6:30 p.m.]

Absent: None.

Agenda Items

(05-223) Recommendation to approve an Agreement with Meyers, Nave, Riback, Silver and Wilson for consultation services on City Attorney contract negotiations.

Councilmember deHaan inquired what the cost and projected hours would be for the consultation services.

Mayor Johnson responded the cost and projected hours would depend upon what the Council requests.

Councilmember deHaan inquired what was the hourly rate, to which the Assistant City Attorney responded \$250.

Councilmember deHaan inquired whether \$250 per hour was the norm, to which the Assistant City Attorney responded the rate was not outside the norm and was within the realm of legal services costs today.

Mayor Johnson stated that she expected the rate to be higher.

Vice Mayor Gilmore stated that she thought the rate would be in the \$300 to \$350 per hour range.

Mayor Johnson stated that the rate is reasonable; that there are no fixed duties.

The Acting City Manager stated that the Council could provide the outside attorney with a scope of work and inquire how many hours would be anticipated.

Councilmember deHaan inquired whether there was a charge for today's meeting with the outside attorney, to which the Mayor responded in the affirmative.

Councilmember Daysog inquired what the outside attorney could do that the Council could not do.

Mayor Johnson stated that the Council does not provide attorney services; the City Attorney would have a conflict of interest in advising the Council on her contract.

Councilmember deHaan moved approval the recommendation predicated on further discussion of the scope of work in closed session.

Vice Mayor Gilmore seconded the motion.

Under discussion, Councilmember Daysog stated that a discreet number of issues are of concern; that he was not clear on the conflict.

Mayor Johnson stated there would be a conflict if there are legal issues; requested further explanation from the Assistant City Attorney.

The Assistant City Attorney stated if Council asks a legal question regarding interpretation of any provision of the City Attorney's contract or requests the contract be approved as to form, there would be a conflict; the City Attorney would not be able to provide information [legal advice]; another attorney's services would be necessary.

Mayor Johnson noted that Council has to hire an attorney to sign [approve the form of] the City Attorney's contract.

Councilmember Daysog stated that the City of Oakland requested the City of San Francisco to comment on whether the Oakland City Attorney position should be an elected position.

Councilmember deHaan stated the Council needs to understand and clean up the mechanisms of the contract, and ensure the contract language is legal.

Mayor Johnson stated when the contract has been changed on a routine basis, outside attorneys have signed [approved the form of] the contract without communicating with the Council, which is not a very good procedure.

Councilmember deHaan stated that the Council is requesting more detailed information.

Vice Mayor Gilmore stated that the Council is trying to determine the history of the current situation and review salary scales; an

outside attorney would need to sign off on [approve as to form] the contract if Council wanted to give the City Attorney a raise.

Mayor Johnson stated the entire contract should be reviewed; the Council needs to know whether a new contract or an addendum to the existing contract would be needed if the Council wanted to give the City Attorney a raise.

Councilmember deHaan stated that he did not have a problem with proceeding.

Councilmember Daysog stated that he would like to protect the Council's bargaining prerogative; there could be some matters of interpretation in the course of bargaining; inquired whether the outside attorney would be a go-between for the Council.

Mayor Johnson responded the Council would define the outside attorney's role.

The Assistant City Attorney stated that the City Attorney directly represents the Council; the proposed Agreement [with Meyers, Nave, Riback, Silver and Wilson for consultation services] would be executed by the City Attorney's office.

Mayor Johnson inquired whether the Assistant City Attorney had a copy of the Agreement.

The Assistant City Attorney responded in the affirmative; stated only the City Attorney can hire outside attorneys under the City Charter.

Councilmember Daysog stated that the meeting tonight is the result of a review of the City Attorney's budget; that he wants to process to maintain the Council's prerogative.

Mayor Johnson stated that the Council maintains all prerogatives and would not give up anything.

Councilmember Daysog noted an outside attorney involved could have a possible conflict; stated that he does not want an outside attorney to encroach on budget issues.

Vice Mayor Gilmore stated that she did not realize that an Agreement was already drafted; that she does not want to agree to something that she has not reviewed.

Mayor Johnson stated that she would like to review the scope of work in the Agreement; inquired who drafted the Agreement.

The Assistant City Attorney responded Mr. Hartinger drafted the Agreement.

Vice Mayor Gilmore stated that she thought that the Council was meeting to agree to hire an outside attorney and that the scope of work would be determined later; that she does not want her second to the motion to be considered as an approval of the Agreement.

Mayor Johnson stated that the Council should not sign an Agreement without reviewing the scope of work; inquired whether the Council could make a motion to authorize the City Attorney to sign the Agreement hiring the outside attorney to work with the Council and finalize the Agreement when the scope of work is determined.

Councilmember deHaan inquired whether the motion could be made in open or closed session, to which the Assistant City Attorney responded the motion must be made in open session.

Councilmember Daysog stated that the scope of work would still need to come back to the Council.

The Assistant City Attorney stated that the Council's agenda is to consider hiring an outside attorney to help with labor negotiations regarding the City Attorney's contract; the outside attorney would be the labor negotiator in closed session; the City Attorney would have a direct conflict in advising the Council on interpretations regarding her contract.

Vice Mayor Gilmore stated that the scope is in paragraph 1 of Mr. Hartinger's letter [proposed Agreement].

The Assistant City Attorney stated that the scope of service is very narrow.

Mayor Johnson stated that the scope can always be changed and looks fine; the Council could have the outside attorney do as little or as much as requested.

The Assistant City Attorney stated retainers are not normally paid to outside counsel.

Mayor Johnson suggested the retainer and the late payment provisions be removed; stated the Agreement should be left as is to allow the Council flexibility; outside counsel would not perform any services the Council does not want.

Vice Mayor Gilmore stated that she would like Mr. Hartinger to

review all documents [City Attorney contract and amendments], provide a history of the current situation, and advise the Council regarding moving forward with yearly amendments or bundling all the previous amendments into one contract.

Mayor Johnson stated that her first intention is to get legal advice.

Councilmember Daysog stated that he would like to begin negotiations with the City Attorney first.

Mayor Johnson stated that negotiations cannot be initiated because the Council needs legal advice.

Councilmember Daysog stated outside counsel might not be necessary; if issues were not resolved during negotiations, then interpretation would be needed.

Mayor Johnson stated that she is not comfortable with initiating negotiations until there is a better understanding of the contract; inquired whether the retainer and late payment provisions could be removed from the Agreement.

Mr. Hartinger responded in the affirmative.

Councilmember Daysog stated negotiating directly with the City Attorney should be the Council's prerogative; inquired whether Mr. Hartinger had any comment on the Council requesting his assistance on interpreting aspects of the negotiations.

Mr. Hartinger stated the matter should be discussed at the right time; direction should be given in closed session.

Councilmember deHaan moved to approval of the Agreement, with the modifications to remove the retainer and late payment provisions.

Mayor Johnson inquired whether the Council is giving up any prerogative by entering into the Agreement, to which Mr. Hartinger responded in the negative.

Councilmember Daysog inquired what happens when there is a conflict of interpretations.

Mr. Hartinger responded Council should trust the [outside] attorneys it hires or seek another opinion and discharge the attorney.

Mayor Johnson stated the ultimate way to settle legal disputes is

to go through the courts; that she hopes that the Council would not get into said situation.

Councilmember Daysog stated that the vote might take the Council to unintended destinations.

Vice Mayor Gilmore concurred with Councilmember Daysog but stated the matter could be discussed in closed session.

Mayor Johnson stated that the Council has complete control.

Councilmember deHaan inquired whether the language should be clarified to: "advising and/or representing the City Council."

Mayor Johnson suggested the language in the scope remain as is, except for the addition of: "as directed by the Council" at the end.

Councilmember Daysog inquired what would fall within "additional matters" in the scope of engagement.

Mr. Hartinger responded "additional matters" is a catchall phrase if the Council requested him to do something else.

Councilmember deHaan stated the Agreement would not have to be reopened to have Mr. Hartinger do something else.

Vice Mayor Gilmore seconded the modified motion [to approve the Agreement, with modifications to remove the retainer and late payment provisions], which carried by the following voice vote: Ayes: Councilmembers deHaan and Gilmore, and Mayor Johnson - 3. Noes: Councilmember Daysog - 1. [Absent: Councilmember Matarrese - 1.]

The Assistant City Attorney stated that the City Attorney hires all attorneys under the City Charter; the City Attorney is hiring the outside attorney to advise the Council regarding interpretation of her contract.

Mayor Johnson inquired whether the Council is authorizing the City Attorney to sign the Agreement as discussed and whether the outside attorney would work for the Council.

The Assistant City Attorney responded that the outside attorney would not work for the Council; the City Attorney controls all legal counsel under the City Charter; the City Attorney is on the hook for the legal advice given.

Mayor Johnson stated that she is not sure the Council needs legal advice on hiring an attorney; that she does not agree that the City Attorney has control over what the outside attorney would do.

The Assistant City Attorney stated that the City Attorney would hire the outside attorney to interpret the City Attorney's contract.

Mayor Johnson stated that the Council has directed the City Attorney to sign the Agreement with changes; inquired whether there would be a problem.

The Assistant City Attorney stated any additional matters for which the Council requests [outside counsel's] services would have to go through the City Attorney.

Mayor Johnson inquired whether the Assistant City Attorney had any problem with the modified Agreement that the Council directed the City Attorney to sign.

Councilmember Daysog stated Mr. Hartinger's letter [Agreement] is addressed to the City Attorney; the word "you" refers to the City Attorney.

Mayor Johnson stated that the second "you" in paragraph 1 refers to the City Council; the Council needs to determine Mr. Hartinger's intention; the City Attorney would have a conflict of interest if the outside attorney working for the Council had to go to the City Attorney for advice.

The Assistant City Attorney stated that the scope is very narrow; the Council would need to stay within the scope.

Mayor Johnson inquired whether "you" in the sentence "provide legal services for additional matters that you request..." refers to the Council or City Attorney.

Mr. Hartinger stated the Agreement is addressed to the City Attorney; the City Attorney is the conduit through which retention would occur.

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Mayor Johnson called a recess at 5:47 p.m. and reconvened the Special Meeting at 6:30 p.m.

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(05-224) Adjournment to Closed Session to consider: Conference with Labor Negotiators; Agency Negotiators: Arthur Hartinger of

Meyers, Nave, Riback Silver and Wilson; Employee: City Attorney.

Following the Closed Session, the Special Meeting was reconvened and Mayor Johnson announced that the Council discussed the City Attorney contract and gave direction to the Negotiator.

Adjournment

There being no further business, Mayor Johnson adjourned the Special Meeting at 7:30 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.